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EXAMINER

DUNN, DAVID R

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,509

Applicant(s)

SHABANA ET AL.

Examiner

David Dunn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,13,14 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7-12,15-18,20 and 21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/17/03
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, 7-12, 15-18, 20, and 21, drawn to a pedal assembly, classified in class 180, subclass 334.
 - II. Claims 5, 6, and 19, drawn to a method of selling a vehicle, classified in class 280, subclass 785.
 - III. Claims 13 and 14, drawn to a seat unit, classified in class 297, subclass 217.3.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the pedal assembly product does not require selling a chassis and body independent of each other.
3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a seat for a vehicle that does not require pedals. See MPEP § 806.05(d).
4. Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the

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product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the seat assembly product does not require selling a chassis and body independent of each other.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II or III, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Kathryn Marra on August 8, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-4, 7-12, 15-18, 20, and 21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5, 6, 13, 14, and 19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

8. Claim 21 objected to because of the following informalities: it appears that "at least one *for* pedal" (emphasis added) should be --at least one pedal--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not describe how the pedals are variably positionable when positioned to the seat or console [see for example, Figure 16; the pedals appear to be fixed to the seat and console].

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claim 10 recites the limitation "said seat" and Claim 11 recites the limitation "said console". There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 1-4, 7-12, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Smythe (6,431,304).

Smythe discloses an adjustable pedal assembly comprising: a track arrangement (see Figure 3) extending longitudinally and transversely with respect to the vehicle, and one or more foot pedals (27, 28) movably mounted in the track arrangement for positioning said pedals with respect to the vehicle longitudinally and transversely along the track in accordance with the driving position selected. The pedals include a base (for example, 35) movable forward and backwardly in the longitudinal track portion and a post (32) connected to the base movable upwardly and downwardly with respect to the base, and a beam (95) pivotally (about 62) supported with respect to the post. The beam is split longitudinally (between portion 95 and portion connected about 62). The pedals are actuatable by-wire (by 63; see also column 21, lines 9-12). The pedal is positionable along any number of points of the guide; the pedals are positionable (positioned with respect to) the seat and/or console.

16. Claims 7-12, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Neill (6,862,950).

O'Neill discloses a pedal assembly with a pedal variably positionable at one of the plurality of position established by a guide (see Figure 4); the pedal is a by-wire system (see 30).

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The pedal is positionable along any number of points of the guide; the pedals are positionable (positioned with respect to) the seat and/or console.

17. Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Rixon et al. (6,295,890).

Rixon et al. discloses a by-wire (62; see also column 3, lines 15-21) wherein at least one pedal is removably mounted (by 10a; see Figure 1), wherein the vehicle includes a plurality of driver interface points to which the foot pedal is connectable (the pedal bracket could be attached at any point of the dash panel).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smythe in view of Porter et al. (6,591,711).

Smythe is discussed above but does not show an actuator for expanding the beam.

Porter et al. teaches a pedal assembly with an actuator (8) for expanding the surface area of the pedal beam.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Smythe with the teachings of Porter et al. such that the pedal beam could be expanded in order to provide convenient access to a parking brake.


Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shimoazono (JP 8-43266) shows pedals that are adjustable. EP 0 050 959 shows adjustable pedals. Byler et al. shows a pedal arrangement of interest. Levine shows adjustable pedals of interest.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Dunn whose telephone number is 571-272-6670. The examiner can normally be reached on Mon-Fri, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Dunn
Primary Examiner
Art Unit 3616